

upon this point, is founded upon the conviction, looking to all the proceedings and evidence in the cause, that the testator did not mean to regard him as his debtor in respect of those claims, and that to enforce them, in the only way in which they can be enforced, and in the mode the petition proposed, by appropriating his share of the income and profits to their payment, would defeat the clear intention of the testator to provide his grandson a competent support.

But, with regard to the claim mentioned in the petition, growing out of the failure of the said Charles A. Waters, to to comply with the terms, upon which he purchased a portion of the estate sold by the trustee, Freeborn G. Waters, and the loss upon a resale thereof, I think the said Charles A. Waters, is liable to the trust estate, and that it is the duty of the said trustee, to retain the amount of the said loss, when ascertained out of the income of the trust estate payable to the said Charles A. Waters.

I am also of opinion, that the said Charles A. Waters is chargeable with the rents, hires, and profits, of the real and personal estate, in the proceedings mentioned, in the case of the said Charles A. Waters, against Charles Howard and wife, and others, and in which this court passed a decree on the 28th of January last; and for any waste or deterioration of said estate, caused by the negligence or misconduct, of the said Charles A. Waters, whilst the same has been in his possession, since the death of the said testator, if any such waste or deterioration shall be proved.

This opinion rests upon the intention of the testator, as remarked upon in deciding the said case of Waters vs. Howard and others, to place his grandchildren upon a footing of equality which would be defeated, if the said Charles A. shall be permitted to receive the rents and profits of the property in his possession, and appropriate them to his own use, and likewise receive his full proportion of the income of the residue of the trust estate.

And, if by his negligence or misconduct he shall impair the value of that portion of the trust estate, to the possession of